

REMARKS

Claims 1 through 9, 11 through 13, 15 and 17 through 20 are pending in this application, of which claims 17 through 20 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. §1.142(b). Accordingly, claims 1 through 9, 11 through 13, and 15 are active.

Claims 1, 4, 11 and 15 have been amended and claims 10, 14 and 16 cancelled. Care has been exercised to avoid the introduction of new matter. Indeed, adequate descriptive support for the present amendment should be apparent throughout the originally filed disclosure. Applicants note that the amendment to claim 1 deletes the embodiment of sealing pores with the dielectric material, and claims 4, 11 and 15 have basically been placed in independent form. Applicants submit that the present amendment does not generate any new matter issue.

Claim 1 (and presumably claims 2, 3, 10, 14 and 16) were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Agarwala et al.

In the statement of the rejection, the Examiner referred to Fig. 3E of Agarwala et al. and to portions of the patent text, asserting the disclosure of a method corresponding to that claimed. This rejection is traversed.

Initially, Applicants note that claims 10, 14 and 16 have been cancelled. As to claims 1 through 3, Applicants would stress that the factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.* 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). There is a difference in manipulative steps

between the claimed method and the methodology of Agarwala et al. that scotches the factual determination that Agarwala et al. disclose a method identically corresponding to that claim.

Specifically, claim 1 is directed to a method of manufacturing a semiconductor device comprising manipulative steps, which include sealing exposed pores in the sidewalls of a porous dielectric layer with either a swelling agent and heating to swell the porous dielectric layer or an adhesion promoter. It is not apparent wherein any such method is disclosed or suggested by Agarwala et al. Indeed, the Examiner's indication that claims 7 and 8 are allowable evinces recognition that Agarwala et al. neither disclose nor suggest a method comprising sealing pores in a porous dielectric layer with either an adhesion promoter or a swelling agent followed by heating to swell the porous dielectric layer.

The above argued difference in manipulative steps between the claimed method and the methodology of Agarwala et al. undermines the factual determination that Agarwala et al. disclose the method identically corresponding to that claim. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 86 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 1 through 3, 10, 14 and 16 under 35 U.S.C. § 102 for lack of novelty as evidenced by Agarwala et al. is not factually viable and, hence, solicit withdrawal thereof.

Applicants, acknowledge with appreciation, the Examiner's indication that claims 4 through 9, 11 through 13 and 15 contain allowable subject matter. Claims 4, 11 and 15 have been placed in independent form. Based upon the arguments submitted supra, it should be


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apparent that the imposed rejection has been overcome, and that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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